REMARKS

The present application was filed on October 17, 2003 with claims 1-28. Claims 1, 17, 27 and 28 are the independent claims.

Claims 1-9, 12, 13, 15-22, 24 and 26-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,314,463 (hereinafter "Abbott") in view of U.S. Patent No. 5,845,283 (hereinafter "Williams").

Claims 10, 11, 14, 23 and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Abbott and Williams in view of U.S. Patent No. 6,076,174 (hereinafter "Freund").

In this response, Applicants amend independent claims 1, 17, 27 and 28 solely to expedite allowance of the present application. Applicants also traverse the §103 rejections and respectfully request reconsideration of the application in view of the amendments above and remarks below.

With regard to the §103(a) rejection of independent claim 1 based on the combination of Abbott and Williams, Applicants assert that the combination fails to teach or suggest each and every limitation in independent claim 1.

Independent claim 1 has been amended so as to recite a method of using a closed loop system to generically control one or more resources associated with at least one computing system. The method comprises the steps of obtaining one or more performance metrics and one or more configurations of the one or more resources in an associated resource specific format; translating one or more performance metrics and one or more configurations from the associated resource specific format to a generic format such that each of the one or more resources are generically controlled; evaluating one or more generically-expressed performance metrics associated with the one or more resources given one or more generically-expressed configurations of the one or more resources; causing a change in the one or more generically-expressed configurations of the one or more resources based on the performance metric evaluating step; translating the one or more changed configurations from the generic format to the associated resource specific format; and updating the one or more resources with the one or more changed configurations in the associated resource specific format, wherein the one or more configurations of the one or more resources are optimized in a closed loop system formed via the combination of the first translating, evaluating, change

causing, second translating and updating steps. Support for these amendments may be found in the present specification at, for example, page 3, lines 6-10; page 6, lines 11-15; and page 10, line 3, to page 11, line 16.

It is important to note that independent claim 1 specifies that the recited method uses a closed loop system for generically controlling one or more resources associated with at least one computing system. As previously noted, while Abbott refers to measuring queue length and delay, and Williams refers to converting data received from an input device to another format to be sent to an output device, no where do the two references teach or suggest using a closed loop system for generically controlling one or more resources associated with at least one computing system. Indeed, there is no such closed loop system even mentioned in either reference. In fact, since Williams merely converts data from an input device to another format to be sent to an output device, an open-ended operation, it teaches away from any use of a closed loop system.

Moreover, claim 1 specifies that a configuration is obtained from a resource in an associated resource specific format. The configuration is then translated into a generic format. The configuration in the generic format is then evaluated and changed. The changed configuration is then translated from the generic format back to the associated resource specific format. The resource is then updated using the changed configuration in the associated resource specific format. It is clear that the resource which is updated is the resource from which the configuration was obtained and, hence, both translations involve the resource specific format associated with the same resource.

The Examiner concedes that Abbott fails to teach or even suggest any use of a generic format in addition to a resource-specific format, much less the claimed series of translations. Rather, the Examiner relies on Williams. However, Williams not only fails to supplement the teachings of Abbott so as to suggest the claimed technique, but rather teaches away from the claimed technique.

Specifically, Williams teaches techniques for receiving data records from a first device in a first device-specific format associated with a data generating device, converting the data records from the first device-specific format associated to a universal format, converting the data records from the universal format to a second device-specific format associated with a data processing device, and outputting the data records in the second device-specific format to the second device.

Even if one assumes for the sake of argument that the data records described by Williams could be analogized to the configurations recited in claim 1, Williams fails to teach any techniques in which data records received from a data generating device are changed and the changed records are then transmitted back to the data generation device. Rather, Williams merely states that "communication control records, e.g., acknowledgements, retransmission requests, flow control commands back to the data generating devices will also be processed." See, for example, Williams at column 6, lines 7-12.

It is important to note that Williams does not perform, or even apparently permit, any modification of the data record while it is in a universal format; rather, the data record is converted from a first device-specific format to the universal format and then converted from the universal device-specific format to the second device-specific format before being transmitted to a data processing device. See, for example, Williams at column 5, line 58, to column 6, line 6; see also column 5, lines 1-21.

As such, even if it were possible to combine the teachings of Abbott with the teachings of Williams "such that a closed loop system is formed so that there may be translating, evaluating, change causing, second translating, and updating, because it allows communication among systems that each uses a different communication format," as alleged by the Examiner in the present Office Action at the bottom of page 4 of the present Office Action, the combined teachings of Abbott and Williams would not suggest the claimed arrangement.

It appears that these teachings would instead suggest a significantly more complex methodology wherein data would be received from a first device in a first device-specific format, converted into a universal format, converted into a second device-specific format, processed while in the second device-specific format by a data processing device, then converted from the second device-specific format into the universal format, converted from the universal format into the first device-specific format, and then transmitted back to the first device in the first device-specific format. This arrangement requires four translation steps and the use of three formats in order to update the configuration of a resource. By contrast, illustrative embodiments of the claimed

arrangement only require one translation from a resource-specific format to a generic format and one translation from the generic format back to the resource-specific format.

Furthermore, Applicants respectfully submit that the Examiner has failed to provide legally sufficient objective motivation for the proposed combination of Abbott and Williams. Specifically, the Examiner merely asserts that it would have been obvious to combine the teachings of Abbott with the teachings of Williams "such that a closed loop system is formed so that there may be translating, evaluating, change causing, second translating, and updating, because it allows communication among systems that each uses a different communication format."

Applicants respectfully submit that the above-quoted explanation is a conclusory statement of the sort rejected by both the Federal Circuit and the U.S. Supreme Court. See *KSR v. Teleflex*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (U.S., Apr. 30, 2007), quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.").

Rather, the Examiner is merely "using the invention as a roadmap to find its prior art components," and hence improperly relying in hindsight. *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337, 75 USPQ2d 1051, 1054 (Fed. Cir. 2005). See also *In re Sang-Su Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002) (quoting *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983)) ("It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to '[use] that which the inventor taught against its teacher.'").

Accordingly, it is believed that claim 1 as amended is patentable over the proposed combination of Abbott and Williams.

Independent claims 17, 27 and 28, as amended, include limitations similar to those discussed above with reference to claim 1, and are therefore believed allowable for reasons similar to those described above with reference to claim 1.

Dependent claims 2-16 and 18-26 are believed allowable for at least the reasons identified above with reference to claims 1 and 17. These claims are also believed to define separately-patentable subject matter over the cited art.

For example, the Examiner concedes that the combination of Abbott and Williams fails to "teach the step of obtaining one or more generically-expressed performance metrics via one or more measurements of at least a part of an end user performance experience." Rather, the Examiner asserts that "it would have been obvious to one ordinary skill in the art of the applicant's invention to have a user give feedback and forming part of the performance metric because to maintain quality of service (QoS), user feedback is important."

Applicants respectfully submit that it is never appropriate to rely solely on official notice regarding "common knowledge" in the art, without evidentiary support in the record, as the principal evidence upon which a rejection was based. Specifically, the Federal Circuit has held that an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks "substantial evidence" support and may not form the basis for a rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

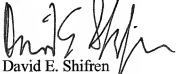
The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See, e.g., *In re Soli*, 317 F.2d 941, 946, 137 USPQ 797, 801 (CCPA 1963); *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943). Moreover, specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-21 (CCPA 1970).

Accordingly, Applicants respectfully request that, for each invocation of official notice, the Examiner provide either documentary evidence or an affidavit or declaration setting forth specific factual statements and explanation to support the finding, as required by 37 CFR 1.04(d)(2) in order for such a rejection to be maintained. In the absence of such evidentiary support, Applicants respectfully submit that the present rejection of claims 7 and 21 is improper and should be withdrawn pursuant to MPEP 2144.03 ("It is never appropriate to rely solely on common knowledge

in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.")

In view of the above, Applicants believe that claims 1-28 are in condition for allowance, and respectfully request withdrawal of the §103 rejections.

Respectfully submitted,



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